

APPEAL NO. 031884
FILED AUGUST 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 10, 2003. With respect to the disputed issue, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter, February 7 through May 8, 2003. The claimant appeals, asserting that he made a good faith effort to obtain employment commensurate with his ability to work by searching for work every week of the qualifying period. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter. The qualifying period for the fifth quarter ran from October 25, 2002, through January 24, 2003. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

While the claimant listed 21 job searches during the qualifying period for the fifth quarter and another five telephone contacts with the Texas Workforce Commission during the qualifying period for the fifth quarter, the hearing officer found that the claimant's testimony was not credible to establish that he made a good faith effort to obtain employment commensurate with his ability to work. The issue presented a question of fact for the hearing officer to resolve based on the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was not persuaded that the claimant's efforts amounted to a good faith effort to obtain employment commensurate with the claimant's ability to work. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge